7. Explain Reason for Proposed Rule(s):

In accordance with G.S. 150B-21.3A, one rule in 15A NCAC 03I is proposed for readoption and two rules in 15A NCAC 03J and 03R are proposed for adoption to restrict highly efficient fishing gears on artificial reefs in State ocean waters to protect all species of finfish, as a complement to the restrictions for artificial reefs in the Exclusive Economic Zone for snapper grouper species. The rules set requirements for research sanctuaries and artificial reefs in State waters, define highly efficient gears, and codify the geographic boundaries of the 13 existing artificial reef sites in State ocean waters. The purpose of the State artificial reef programs is to develop hard bottom habitat that aggregate fishery resources and improve user access to fisheries. By restricting the use of highly efficient fishing gears on artificial reefs, the likelihood of overexploitation is reduced. Gears with this characteristic may be considered all those other than hand line, hook and line, rod and reel, and spearfishing gear. All harvest by spearfishing gear would be restricted to recreational limits.

In accordance with G.S. 150B-21.3A, nine rules 15A NCAC 03 are proposed for readoption and repeal through readoption to further address recommendations laid out in Session Law 2019-37 and the subsequent Shellfish Aquaculture User Conflict Study completed by the Department of Environmental Quality, Division of Marine Fisheries, and Marine Fisheries Commission. Most rule changes conform to three other recently approved shellfish lease rules. Additional changes are proposed to continue supporting the efficiency of the State's shellfish lease program and production. Specifically, changes seek to streamline and shorten processes for shellfish lease applications, shellfish lease application grievances by the public, production reporting requirements, and shellfish lease transfers and subleases.
In accordance with G.S. 150B-21.3A, 40 rules in 15A NCAC 03 are proposed for readoption that relate to general rules, gear, shellfish, crustacea, finfish, nursery areas, and licenses. The rules have been reviewed to conform to rulemaking requirements and contain clarifying and technical changes.
In accordance with G.S. 150B-21.3A, 18 rules in 15A NCAC 03 are proposed for readoption that relate to definitions, imported species, recordkeeping, gear, marketing shellfish, and licenses. Overall, most changes are conforming and technical in nature. Small benefits are expected related to removing a time requirement for obtaining a tournament license and by broadening the types of recordkeeping permissible for inspection by Marine Fisheries Inspectors at fish dealer locations by including electronic trip tickets. A proposed change to marking requirements for commercial trotlines would likely incur a small financial cost to select fishermen. The change is expected to make trotlines easier to identify and monitor, as well as result in consistent marking requirements across gear types. A small opportunity cost is expected for a portion of shellfish lease holders to obtain and comply with the reporting requirements of an aquaculture operation permit. The permit consolidates all existing shellfish lease requirements into a single management tool and over half of lease holders already hold the permit. Having all shellfish lease holders subject to the same permit requirement facilitates the tracking and monitoring of shellfish leases overall and the timely handling of potential public health issues, ultimately enhancing the resource.

In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and amendment that conform rule language with new blue crab and gear management measures approved through Amendment 3 to the N.C. Blue Crab Fishery Management Plan. All of these new measures are already in effect via proclamation following adoption of the plan by the Marine Fisheries Commission in February 2020. The proposed changes codify these existing requirements in permanent rule. A proposed change to marking requirements for pots would likely incur a small financial cost to select fishermen. The change is expected to make pots easier to identify and monitor, as well as result in consistent marking requirements across gear types. The Division of Marine Fisheries estimates at least half of commercial fishermen using this gear already meet the requirements.

In accordance with G.S. 150B-21.3A, 11 rules in 15A NCAC 03 are proposed for readoption that conform rules related to permit and license suspensions and revocations to standards of the Administrative Procedure Act (G.S. 150B) and increase clarity of the rules. The majority of changes are conforming and clarifying amendments that incur no impacts. Proposed changes with anticipated impacts provide authority to deal with rare events related to permits and licenses; provide significant context to the differences in license and permit suspensions, revocations, and requirements; and provide administrative alternatives to increase overall Division of Marine Fisheries efficiency. Changes proposed to 15A NCAC 03J .0501 for Pound Net Set Permits would delegate narrow proclamation authority to the division director to waive the 30-day pound net set requirement for the southern flounder fishery that has seasons that are now less than 30 days in length, maintaining compliance with the requirements of Amendment 2 to the N.C. Southern Flounder Fishery Management Plan. In all, these proposed changes provide benefits in terms of increased division efficiency and increased protection of marine and estuarine resources.
In accordance with G.S. 150B-21.3A, eight rules in 15A NCAC 03 are proposed for readoption and repeal through readoption that conform administrative procedures rules to the requirements of the Administrative Procedure Act, namely G.S. 150B-4, Declaratory rulings, G.S. 150B-20, Petitioning an agency to adopt a rule, and several articles of 150B that address administrative hearings and their judicial review. Throughout the rules, elements that merely repeat the content of law are proposed to be struck, per G.S. 150B-19. Additional proposed changes make minor technical and clarifying amendments. Overall, the proposed changes would increase efficiency in contested case hearings, declaratory rulings, and petitions for rulemaking. One proposed change in 15A NCAC 03P .0301 removes the burden for petitioners to submit 15 hard copies of a petition since the majority of petitions are submitted electronically.

In accordance with G.S. 150B-21.3A, 12 rules in 15A NCAC 03 and 18A are proposed for adoption and repeal through readoption that relate to crustacea and shellfish and set specific requirements for shellfish management areas, depuration of shellfish, crustacea and shellfish permits, and shellfish tagging. Session Law 2011-145 abolished the Division of Environmental Health and transferred the Shellfish Sanitation and Recreational Water Quality Section to the Division of Marine Fisheries under a Type I transfer. Prior to this change, the Division of Environmental Health advised the Division of Marine Fisheries on certain matters relating to public health of crustacea and shellfish and the Division of Environmental Health rules bore this out by one division advising the other. Now that the authority for these rules all fall under the Marine Fisheries Commission, amendments are proposed to rules that have overlapping content, including the repeal through readoption of three rules.

In addition, amendments are proposed to increase efficiency for the Division of Marine Fisheries by making rule requirements more clear and consistent and by moving established requirements from proclamations and permit conditions into rules. Additional proposed amendments to shellfish management areas would broaden the Division of Marine Fisheries director's proclamation authority to address variable conditions. Changes to crustacea and shellfish permits and dealer tags would clearly make it unlawful to engage in the listed activities without first obtaining the required permit and certificate of compliance, or if dealer tags are not being included on shellstock. The amendments would enhance the protection of public health by strengthening the ability of Marine Fisheries Inspectors to enforce crustacea and shellfish permit, and harvest and dealer requirements in case it is needed if someone was out of compliance, although typically voluntary compliance is achieved.